

**REMARKS/ARGUMENTS**

Claims 11-60 were pending in the present application. Claims 19, 20, 23-40, and 53-55 are allowed. The present response amends claims 11, 13, 16, 17, 49, 50, and 60, leaving pending in the application claims 11-60. Reconsideration of the rejected claims is respectfully requested.

**I. Allowed Claims**

Claims 19, 20, 23-40, and 53-55 are allowed.

**II. Objection to the Claims**

Claims 16, 17, 49, 50, and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 16, 17, 49, 50, and 60 have been rewritten in independent form including all of the limitations of the base claim and any intervening claims, such that these claims should be in condition for allowance. Applicants therefore respectfully request that the objection to the claims be withdrawn.

**III. Rejection under 35 U.S.C. §102**

Claims 11-15, 18, 21, 22, 41-48, 51, 52, and 56-59 are rejected under 35 U.S.C. §102(e) as being anticipated by *Whitcroft* (US 6,264,649). Applicants' claim 11 requires a skin treatment device, defined by:

a body having a first planar surface which is placed against a patient's skin, the first planar surface includes a first area, and includes a second area which defines an aperture adjacent the first area;

a cooling element disposed in the body, said cooling element operating to cool the first area;

a radiation source disposed in the body, the radiation source positioned to emit radiation through the aperture, whereby radiation energy is applied to the patient's skin; and

a window aligned with the aperture in the body such that the radiation from the radiation source is transmitted through the window prior to being transmitted through the aperture

(*emphasis added*). Such limitations are not disclosed by *Whitcroft*. *Whitcroft* discloses a laser treatment cooling head including "a windowed aperture in an angled side wall of body facing towards the aperture in the cooling surface" (col. 3, lines 35-40; Figs. 2, 6, 7). Radiation from a radiation source is not transmitted through this window, as this window merely is a viewing window enabling "the surgeon to view the area of skin being

treated whilst treatment is actually taking place” (col. 4, lines 24-30). *Whitcroft* does not disclose a “recessed window adjacent to the first area” as recited in the Office Action on page 2. Further, the device of *Whitcroft* would not operate properly if such a window was “aligned with the aperture in the body such that the radiation from the radiation source is transmitted through the window prior to being transmitted through the aperture,” as required by Applicants’ claim 11, as *Whitcroft* is directed to applications such as skin resurfacing whereby “debris from the skin” is removed via a “vacuum pump attached to the tube 8” through the square aperture (col. 4, lines 24-44). Using a window according to Applicants’ claim 11 in the device of *Whitcroft* would prevent this debris from being removed through the aperture and tube. Therefore, not only does *Whitcroft* fail to disclose such a window, but the device of *Whitcroft* would not function properly if such a window were used. As such, claim 11 and dependent claims 12-15, 18, and 22 cannot be anticipated by *Whitcroft*.

Applicants’ claim 41 requires a dermatologic tissue treatment device, defined by:

- a body having a skin-contacting end;
- a skin-cooling element carried by the body and having a cooling surface at the skin-contacting end;
- a radiation source carried by the body and having a recessed window through which tissue treating radiation passes to a patient's skin;
- said recessed window being laterally offset from the cooling surface;
- said recessed window being spaced apart from the cooling surface in a direction away from the patient's skin when the cooling surface is contacting the patient's skin so to create a gap between the recessed window and the patient's skin; and
- an open region between the recessed window and the skin to permit viewing of the patient's skin under the recessed window

(emphasis added). As discussed above with respect to claim 11, *Whitcroft* does not disclose a recessed window through which tissue-treating radiation passes to a patient's skin that is laterally offset and spaced apart from the cooling surface as required by Applicants’ claim 41. Since *Whitcroft* does not include such a window, there would be no motivation for the window to be recessed to prevent problems discussed in the present application with having a window flush with the cooling surface. As such, *Whitcroft* cannot anticipate Applicants’ claim 41, or dependent claims 42-48, 51, and 52.

Applicants’ claim 56 requires a dermatologic tissue treatment device, defined by:

- a body having a skin-contacting end;
- a skin-cooling element carried by the body and having a cooling surface at the skin-contacting end;

the body having a recessed window through which tissue treating radiation passes to a patient's skin; and  
said recessed window being laterally offset from the cooling surface;  
said recessed window being spaced apart from the cooling surface in a direction away from the patient's skin when the cooling surface is contacting the patient's skin, such that an open region is created between the recessed window and an area of the patient's skin, and the open region provides a view port

(*emphasis added*). As discussed above, *Whitcroft* does not disclose a recessed window through which tissue treating radiation passes to a patient's skin as required by Applicants' claim 56, such that claim 56 and dependent claims 57-59 cannot be anticipated by *Whitcroft*.

Applicants' therefore respectfully request that the rejection with respect to claims 11-15, 18, 21, 22, 41-48, 51, 52, and 56-59 be withdrawn.

#### **IV. Amendment to the Claims**

Unless otherwise specified, amendments to the claims are made for purposes of clarity, or to write dependent claims in independent form. and are not intended to alter the scope of the claims or limit any equivalents thereof. The amendments are supported by the specification and do not add new matter to the specification.

#### **V. Conclusion**

In view of the above, it is respectfully submitted that the application is now in condition for allowance. Reconsideration of the pending claims and a notice of allowance is respectfully requested.

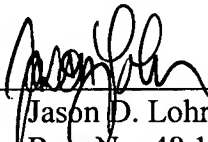
The Commissioner is hereby authorized to charge any deficiency in the fees filed, asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 50-1703, under Order No. ALTU-530. **A duplicate copy of the transmittal cover sheet attached to this Response to Office Action Mailed September 29, 2005, is provided herewith.**

Respectfully submitted,

STALLMAN & POLLOCK LLP

Dated: October 18, 2005

By: \_\_\_\_\_

  
Jason D. Lohr  
Reg. No. 48,163

Attorneys for Applicant(s)